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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,712	01/28/2002	Max C. Perena	PERE100	2079
23590	7590	11/03/2004	EXAMINER	
RICHARD L HUFF 19304 OLNEY MILL ROAD OLNEY, MD 20832			LUBY, MATTHEW D	
			ART UNIT	PAPER NUMBER

3611

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/056,712

Applicant(s)

PERENA, MAX C.

Examiner

Matt Luby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Decision by the Board***

1. The BPAI essentially affirmed in part as per MPEP 1214.06, Part III. Therefore, the prosecution as to claim 2 is closed. Furthermore, the course of action suggested by the Board on page 5, paragraph 3 of the decision is followed below.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4 and 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah (U.S. Patent No. 5,333,333) in view of Jones (U.S. Patent No. 4,973,044).

Mah discloses an ambulatory device comprising a U-shaped frame (the base frame shown in Figure 1 to which the wheels are attached) having a closed rear end (the bottom part of the "U" is "closed" by the bar between the rear wheels), two sides (Figure 1), and an open front end (Figure 1), two small front wheels (Figure 1), two large rear wheels (Figure 1), a seat (38) attached to the rear of the U-shaped frame (through vertical supports indicated by reference numeral 32 in Figure 1), and a support system (34) attached to the rear end of the U-shaped frame (through vertical supports indicated by reference numeral 32 in Figure 1), which support system comprises a support frame

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having a vertical section and a horizontal section (shown in Figure 1), a body halter having snap hooks and cables (snap hooks, 176, and cables, 174), which snap hooks and cables are connected by connectors to a swivel bar (44 or 216), which swivel bar is connected to a support bar (146 - Figure 7), and which support bar is connected via control connectors (120, 144) through a pulley system (138, 140, figures 17 and 18) to a winch (90) on the vertical section of the support frame (see Figure 6), wherein the two sides contain hand rails (inasmuch as there are handrails which are attached through the vertical supports indicated by reference numeral 32 in Figure 1 and on the seat, as shown, the two sides 'contain' handrails), wherein the vertical section of the support frame contains a height-adjusting mechanism (shown in Figure 12 as fastener bolts 76 and holes 78 and described in column 4, line 57 to column 5, line 2). Mah does not specifically disclose that the body halter has straps connected to the swivel bar. Jones shows straps connected to a swivel bar (Fig. 1) as a conventional component of a body harness for supporting a patient in order to obtain the advantages provided by straps (i.e., a wider base for the harness supporting the patient which would provide greater comfort to the patient in the case that the supports, the straps, contacted the patient as well as the apparent advantage of greater strength). It would have been obvious to one of ordinary skill in the art at the time of the invention to include conventional straps as a component of the patient-supporting body harness of Mah, as taught by Jones, in order to obtain the apparent advantages provided by straps (a wider base and greater strength).

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4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Jones as applied to claim 1 above, and further in view of Colpron (U.S. Patent No. 5,165,123).

The modified Mah device discloses all of Applicant's claimed invention except for hand grasps on the rear wheels. Colpron discloses an ambulatory device including large rear wheels with hand grasps (best seen in Figure 2) in order to permit the rider to self-propel the device (an inherent and well-known advantage of hand-grasps on self-propelled wheelchair devices). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide large rear wheels with hand grasps on the modified Mah device, as taught by Colpron, in order to permit the rider to self-propel the device.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Jones, as applied to claim 1 above, and further in view of Santmann (5,224,721).

The modified Mah device discloses all of the claimed invention except that the seat is foldable. Santmann discloses an ambulatory device including a foldable seat (88) in order to provide a means for the user to rest that may be raised as desired (column 1, lines 12-18 and 21-27). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a foldable seat on the modified Mah device as taught by Santmann in order to provide a means for the user to rest that may be raised as desired.

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**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (703) 305-0441. The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

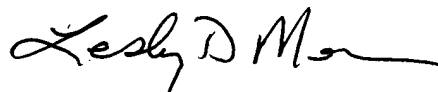
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Matt Luby  
Examiner  
Art Unit 3611



M.I.  
October 19, 2004



LESLEY D. MORRIS  
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